

This Opinion is Not a
Precedent of the TTAB

Mailed: September 15, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Keygo LLC

Serial No. 88588055
—

Francis J. Ciaramella of Francis John Ciaramella, PLLC
for Keygo LLC.

Sahar Nasserghodsi, Trademark Examining Attorney, Law Office 115,
Daniel Brody, Managing Attorney.
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Before Wellington, Goodman and Coggins,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Keygo LLC (“Applicant”) seeks registration on the Principal Register of the mark:

**URBAN
GREEN**

(with GREEN disclaimed) for “towels; wrapping cloth for general purposes; children’s
towels; cotton base mixed fabrics; cotton fabric; kitchen towels; washcloths; all of the

foregoing goods made from environmentally friendly materials” in International Class 24.¹

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), based on a likelihood of confusion with the standard character mark **urbangreen furniture** (FURNITURE disclaimed) for various types of furniture “made from environmentally friendly materials” in International Class 20.²

When the refusal was made final, Applicant appealed and requested reconsideration of the refusal. The Examining Attorney denied the request for reconsideration.³ Applicant and the Examining Attorney have filed briefs.

¹ Application Serial No. 88588055; filed August 22, 2019, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on Applicant’s claim of a bona fide intent to use the mark in commerce. According to the application, the colors green and white are claimed as a feature of the mark.

² Registration No. 4299228; registered March 5, 2013. The registration’s full identification of goods is:

Bathroom furniture; Bedroom furniture; Buffets; Cabinet doors for furniture cabinets; Cabinet drawers for furniture cabinets; Cabinets; Computer furniture; Custom furniture; Dinner wagons; Doors for furniture; Drafting tables; Drawers; Entertainment centers; Furniture; Furniture chests; Furniture for displaying goods; Furniture frames; Furniture made from wood or substitutes for wood; Furniture moldings; Furniture parts; Furniture, namely, display units; Furniture, namely, dressers; Furniture, namely, sales and display counters; Furniture, namely, showcases; Furniture, namely, wall units; Furniture, namely, wardrobes; Kitchen furniture, namely, ready to assemble mobile kitchen islands; Library furniture; Living room furniture; Office furniture; Residential and commercial furniture; School furniture; Screens; Seating furniture; Tables; Television stands; all of the foregoing goods made from environmentally friendly materials.

³ In rejecting Applicant’s request for reconsideration, the Examining Attorney issued a nonfinal Office Action on August 13, 2020, addressing an issue concerning the description of Applicant’s proposed mark. Applicant responded satisfactorily to this issue in its response filed December 11, 2020. The Examining Attorney then reinstated the finality of the likelihood of confusion refusal in an Office Action issued on December 16, 2020 (4 TTABVUE), and the appeal proceedings were resumed by the Board (5 TTABVUE).

We affirm the refusal to register.

I. Likelihood of Confusion -- Analysis

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on likelihood of confusion. *In re E. I. DuPont de Nemours & Co*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015); *see also In re Majestic Distilling Co. Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor for which there is argument and evidence. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019); *M2 Software, Inc. v. M2 Commc’ns., Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the goods. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record

evidence but ‘may focus ... on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

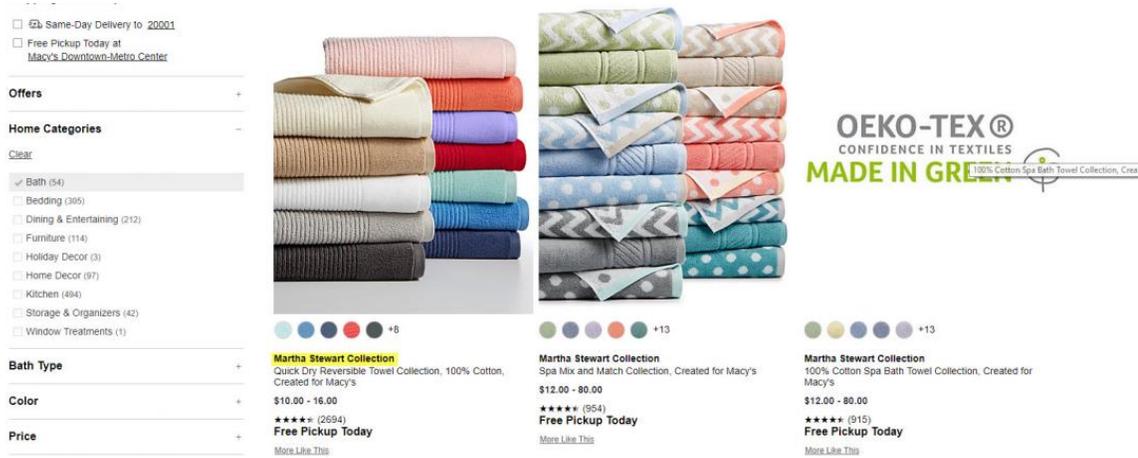
We discuss these factors and the other relevant *DuPont* factors below.

A. Similarity or Dissimilarity of the Goods, Channels of Trade and Classes of Consumers

Under the second *DuPont* factor we consider “[t]he similarity or dissimilarity and nature of the goods or services,” and under the third *DuPont* factor we consider “the similarity or dissimilarity of established, likely-to-continue trade channels.” *DuPont*, 177 USPQ at 567; see also *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018). We must base our comparison of the goods on the identifications in the cited registration and Applicant’s application. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Sys., Inc. v. Houston Comput. Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed in the identification of goods in a particular class. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, *6 (TTAB 2019); *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1126, n.5 (TTAB 2015).

The Examining Attorney argues that Applicant’s towels and cotton fabrics are related to Registrant’s furniture because these are types of goods that may be found

in the same trade channels, such as retail home furnishing stores, and frequently sold under the same trademark or house mark. In support, she submitted Internet printouts from 15 different websites showing such use. For example, the Macy's retail website offers "Martha Stewart Collection" branded towels and furniture:



-and-



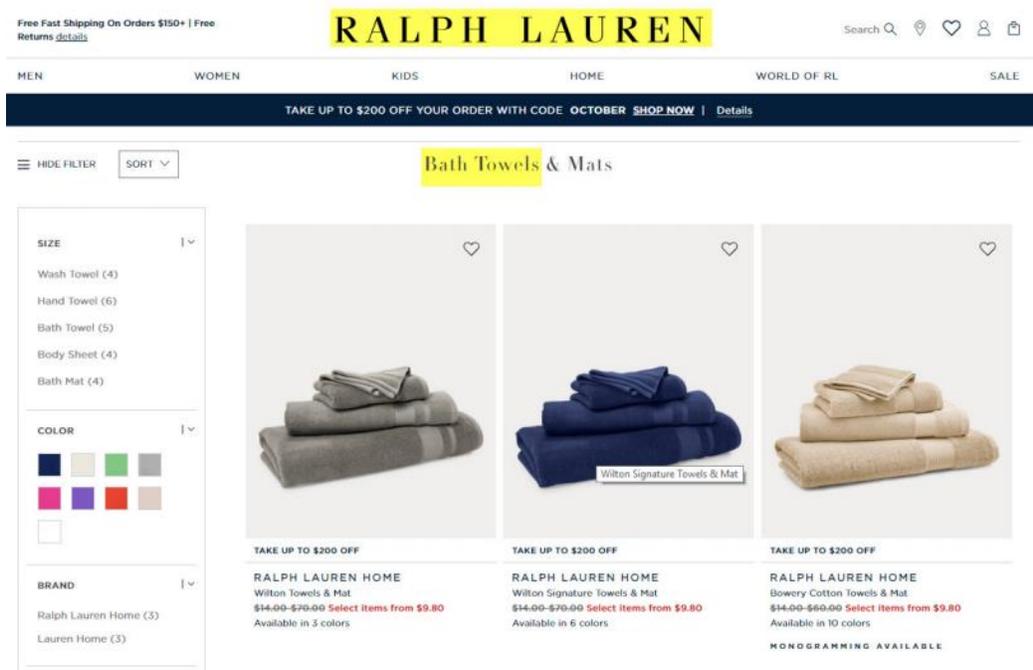
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The Ralph Lauren website offers towels and furniture under their house brand:

⁴ October 30, 2019 Office action, TSDR pp. 5-7.



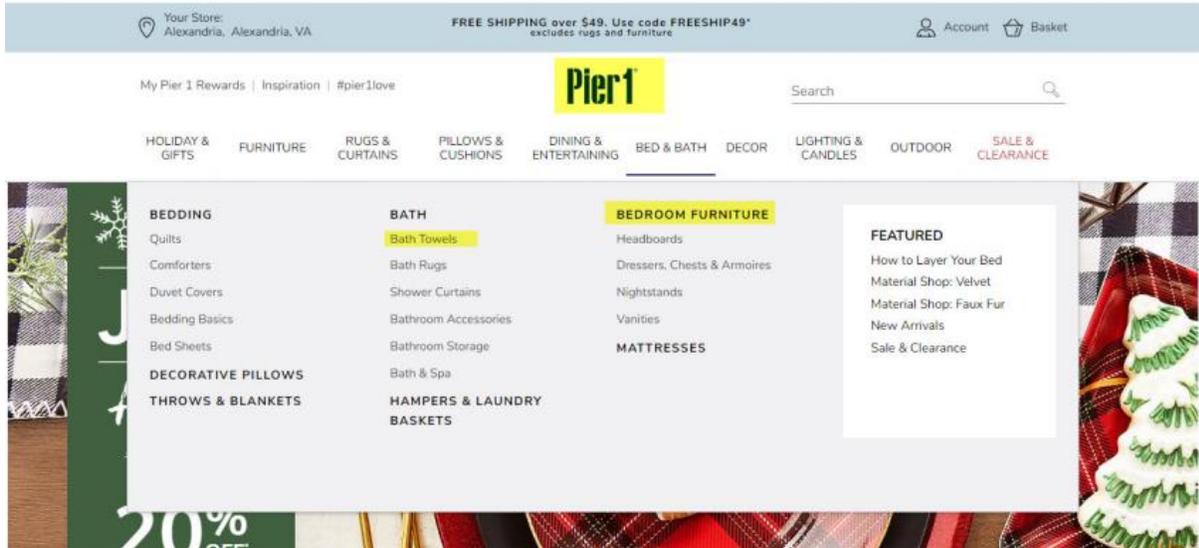
-and-



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One other illustrative example is from the Pier 1 home furnishing retail website:

⁵ *Id.*, TSDR pp. 8-10.



In addition, the Examining Attorney submitted copies of 6 third-party, use-based registrations covering towels or fabrics as well as furniture. These include U.S. Reg. No. 3415489 for the mark MICHAEL S SMITH for goods that include “furniture” and “cotton fabric,”⁷ and U.S. Reg. No. 5898137 for the mark LITTLETTTE for “furniture” and “towels.”⁸ “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1998).

⁶ *Id.*, TSDR pp. 13-14.

⁷ February 11, 2020 Office action, TSDR pp. 2-3.

⁸ *Id.*, TSDR pp. 13-15.

Applicant does not contest the relevance or probative value of the Examining Attorney's evidence; rather, Applicant cites to two Board non-precedential decisions to support the contention that the involved goods are unrelated.⁹ As Applicant acknowledges, the Board permits citation to any Board decision, but a decision designated as not precedential is not binding upon the Board. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) §101.03 (2021) (discussion of "decisional law"). Indeed, the Board discourages the citation to non-precedential opinions and, when such decisions are cited, they are limited to whatever persuasive value they may have. *Id.*; *see also, e.g., In re tapio GmbH*, 2020 USPQ2d 1138, at *10 n.30 (TTAB 2020) ("Generally, the practice of citing non-precedential opinions is not encouraged.").

We have reviewed the two non-precedential decisions that Applicant relies upon and find them to have no persuasive value in connection with the instant appeal. The first non-precedential decision, *In re Sealy Tech., LLC*, Ser. No. 75369284 (TTAB March 16, 2001), is over 20 years old, and Applicant fails to mention that the Board found the involved goods in that case, i.e., beds/pillows and bed linens, "are, at least, complementary goods." *Id.* Moreover, in ultimately concluding that confusion was not likely, the Board found the marks' shared term, CROWN JEWEL, was "highly suggestive" of the involved goods and made a point to note that it was "mindful of applicant's pre-existing registration for the mark CROWN JEWEL." *Id.* As to the second, non-precedential decision that Applicant relies upon, *Earnhardt v.*

⁹ 6 TTABVUE 10.

Kerry Earnhardt, Inc., 91205331 (TTAB February 26, 2016),¹⁰ the Board specifically pointed out in this inter partes proceeding that the opposer “did not proffer any testimony or evidence to prove that the goods and services in the pleaded registrations were related to Applicant’s goods and services.” *Id.* Thus, the two non-precedential decisions clearly involved very different evidentiary records and different circumstances on which the Board based its findings that confusion was not likely. Put simply, the non-precedential decisions are not the type that may be persuasive in connection with the relatedness of the goods in this appeal. *See In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *cf. Hyde Park Footwear Co. v. Hampshire-Designers, Inc.*, 197 USPQ 639, 643 (TTAB 1977) (prior decisions cited for relatedness of goods are more valuable for their instruction on what kinds of evidence resulted in the Board’s conclusions than as the sole support for relatedness in another proceeding). Moreover, it is well settled that “[e]ach case must be decided on its own facts and the differences are often subtle ones.” *In re Recreational Equip., Inc.*, 2020 USPQ2d 11386, at *2 (TTAB 2020) (quoting *Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973)).

In sum, the aforementioned Internet and third-party registration evidence adduced by the Examining Attorney is sufficient to establish a relationship between

¹⁰ The Board’s non-precedential decision was appealed and, for reasons unrelated to the (dis)similarity of the involved goods and services, was vacated and remanded by the Federal Circuit. *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 123 USPQ2d 1411 (Fed. Cir. 2017).

towels or fabrics and furniture. In addition, as discussed above, the Internet evidence reveals that these goods may be found in some of the same trade channels, such as online retail stores featuring home furnishings, like Pier 1. The second and third *DuPont* factors therefore weigh in favor of finding a likelihood of confusion.

B. Alleged Weakness of the Registered Mark

We turn now to the sixth *DuPont* factor, which “considers ‘[t]he number and nature of similar marks in use on similar goods [or services].’” *Omaha Steaks Int’l v. Greater Omaha Packing Co.*, 908 F.3d 1315, 128 USPQ2d 1686, 1693 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). “The purpose of introducing evidence of third-party use is ‘to show that customers have become so conditioned by a plethora of such similar marks that customers have been educated to distinguish between different [such] marks on the bases of minute distinctions.’” *Id.* (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 369 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)).

In this regard, Applicant argues that:

Other marks besides those belonging to the Applicant and [Registrant] have used the word “URBAN” for goods . . . in Classes 020 and 024. As a result of such registrations continued co-existence, it cannot be said that Applicant’s mark will create a likelihood of confusion.

If these marks as well as the [cited m]ark are able to co-exist with so many other similar trademarks for analogously similar [goods], then it can also be said that there is room for Applicant’s mark for URBAN GREEN. Applicant submits that such extensive use of said words in this manner by third parties for similar goods or services entitles Applicant to a reduced scope of trademark protection, which weighs against a finding of likelihood of confusion.

6 TTABVUE 13-14. In support, Applicant relies on 16 third-party registrations for marks that incorporate the term URBAN for various goods in either Class 20 or 24, but notably do not include the term GREEN in the mark.¹¹

We do not agree with Applicant's conclusion and find its reliance on the third-party registrations is misplaced. That is, none of the registered marks have both terms URBAN and GREEN, as found in both Applicant's and Registrant's marks. Furthermore, Applicant has not demonstrated that the goods identified in several of the registrations are related. *See i.am.symbolic*, 123 USPQ2d at 1751 (disregarding third-party registrations for other types of goods where the proffering party had neither proven nor explained that they were related to the goods in the cited registration). For example, Reg. No. 5903254 (URBAN INTERIOR) is for curtain rods and drapery hardware, Reg. No. 5672822 (URBAN HEALERS and design) is for flags, and Reg. No. 4788838 (URBAN FARM) is for decorative centerpieces of wood, flatware, and serving ware. In any event, we point out that the registrations are not even evidence of use of the marks or consumer recognition of the marks. *In re Morinaga Nyugyo K.K.*, 120 USPQ2d 1738, 1745 (TTAB 2016) (Such registrations "standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences."). *See also In re Helene Curtis Indus. Inc.*, 305 F.2d 492, 134 USPQ 501,

¹¹ Copies of the registrations were attached to Applicant's request for reconsideration filed on August 10, 2020.

503-04 (CCPA 1962). Ultimately, the record does not support Applicant's contention that there is "such extensive use" of the term URBAN in connection with the involved goods; and, even if it did, for the above reasons, this would not be enough to show that the mark URBAN GREEN, or URBANGREEN, is weak in connection with the identified goods.

Accordingly, the sixth *DuPont* factor is neutral in our analysis.

C. Similarity or Dissimilarity of the Marks

We now consider the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Stone Lion*, 110 USPQ2d at 1160; *DuPont*, 177 USPQ at 567. "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Inn at St. John's, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The issue is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression such that confusion as to the source of the goods offered under the respective marks is likely to result. *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L'Oreal S.A. v. Marcon*, 102

USPQ2d at 1438; *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

We do not predicate our analysis on a dissection of the involved marks; we consider the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1160; *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). But one feature of a mark may be more significant than another, and it is not improper, for rational reasons, to give more weight to a dominant feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *Stone Lion*, 110 USPQ2d at 1161 (finding that the Board did not err in reasoning that the term LION was dominant in both applicant’s mark STONE LION CAPITAL and opposer’s marks LION CAPITAL and LION); *In re Chatam Int’l*, 71 USPQ2d at 1946.

The logo consists of the words "URBAN" and "GREEN" stacked vertically. Both words are in a bold, sans-serif font. The letters are filled with a teal color and have a dark outline, giving them a three-dimensional appearance.

Here, we find Applicant’s mark  is extremely similar to Registrant’s standard character mark, **urbangreen furniture**. Applicant’s mark is aurally identical to the first (compound) term in the registered mark. Visually, because the cited mark is in standard characters, it is entitled to protection in various font styles, colors and sizes, including that used by Applicant. *See In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018) (“[T]he rights associated with a standard character mark reside in the wording per se and not in any particular font style, size, or color.”). In other words, we must assume that Registrant’s mark may be presented

in all uppercase and green lettering, like that used by Applicant in the drawing for its mark. The fact that Applicant's mark displays the terms URBAN and GREEN as two separate words, whereas Registrant's mark combines the two words, is of very little consequence in terms of distinguishing the marks. The Board has long and often held that the deletion of a space between two easily recognizable words is rarely significant for purposes of distinguishing the marks. *See e.g., Stockpot, Inc. v. Stock Pot Rest., Inc.*, 220 USPQ 52, 54 (TTAB 1983), *aff'd*, 737 F.2d 1576, 222 USPQ 665 (Fed. Cir. 1984) (finding STOCKPOT and STOCK POT confusingly similar); *In re Best W. Fam. Steak House, Inc.*, 222 USPQ 827, 827 (TTAB 1984) (BEEFMASTER and BEEF MASTER found "practically identical"). Again, the existence of a space does not detract from the fact that URBAN GREEN will be verbalized by consumers in the same manner as URBANGREEN.

We do not ignore the additional word FURNITURE in Registrant's mark. However, the term is generic for the furniture goods identified in the registration and was appropriately disclaimed by Registrant. Any relevance this term may play in the likelihood of confusion analysis is significantly reduced because consumers will view it merely as referring to the identified goods, and would not rely on the word to indicate source. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (in comparing THE DELTA CAFÉ to DELTA, the generic term CAFÉ lacks sufficient distinctiveness to create a different commercial impression).

The two marks convey nearly the same commercial impression, especially given that both Applicant's towels and fabrics, as well as Registrant's furniture, are

described in the application and registration as “all ... made from environmentally friendly materials.” Thus, in the context of goods, the combination of the terms “urban” and “green”¹² may be understood by consumers as suggestive that Applicant’s and Registrant’s goods are ecologically-friendly or beneficial in a metropolitan environment. *See In re 1st USA Realty Pros.*, 84 USPQ2d 1581, 1586-87 (TTAB 2007) (finding that the respective marks carry the identical suggestive connotation). Further, the color green of Applicant’s mark visually reinforces the “green” (i.e., environmentally friendly) nature of the goods.

Applicant argues that it and Registrant “present, use, and advertise their respective marks in unique ways” and that “upon viewing Applicant’s goods, the difference in commercial impression is immediately apparent.”¹³ In support, Applicant inserted an illustration in its brief depicting an example of how its mark is used on “bamboo towels,” alongside an example of how Registrant’s mark is used on a “twin storage bed.”¹⁴ Applicant’s argument, based on extrinsic evidence showing only one example of Applicant’s and Registrant’s actual use of their marks, is unavailing. We must make our likelihood of confusion analysis based on the marks

¹² We take judicial notice that “urban” is defined as “of or relating to cities and the people who live in them;” and “green” is defined as “tending to preserve environmental quality (as by being recyclable, biodegradable, or nonpolluting.)” *Merriam-Webster.com Dictionary*, accessed September 10, 2021. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

¹³ 6 TTABVUE 9.

¹⁴ *Id.* at 9.

as shown in the drawing pages of the involved application and registration, and cannot assume there will be additional matter, such as trade dress, that may help distinguish the marks on the packaging. In other words, our analysis focuses on the marks in the application and registration, not “extrinsic evidence concerning the actual uses of the marks” where “the restrictions are not reflected in the four corners of the ... [application and registration].” *i.am.symbolic*, 123 USPQ2d at 1748-49 (rejecting limitations based on examples of use where the limitations are not in the registration, and holding “[t]o the extent that Symbolic is advocating that we consider another mark, will.i.am, that is not part of the applied-for mark in analyzing the similarity of the marks, we decline to do so”).

For the aforementioned reasons, we find the two marks are very similar to one another in terms of appearance, sound, connotation, and commercial impression. Accordingly, the first *DuPont* factor supports that confusion is likely.

D. Other Factors Argued Remain Neutral

Applicant makes additional arguments in its brief why it believes confusion is not likely. However, these arguments either lack the necessary evidentiary support or are not persuasive. For example, Applicant argues that “there is no evidence that the cited [mark] is famous.”¹⁵ However, the fifth *DuPont* factor considers the “fame [or strength] of the **prior** mark,” *DuPont*, 177 USPQ at 567 (emphasis added), and fame, if it exists, may only favor the prior user by conveying a broader scope of protection

¹⁵ *Id.* at 12.

to its mark. *See Wet Seal Inc. v. FD Mgmt. Inc.*, 82 USPQ2d 1629, 1638 n.18 (TTAB 2007). In other words, the lack of evidence of fame of Registrant's mark does not make a likelihood of confusion less likely. Indeed, "it is settled that the absence of such evidence is not particularly significant in the context of an ex parte proceeding." *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009). Thus, that factor remains neutral.

Applicant also argues that "[t]here has been no documented evidence that shows that any consumers have confused the respective marks in commerce."¹⁶ Applicant's mark is based on a bona fide intent to use the mark in commerce and there is no evidence showing that there has been any meaningful opportunity for actual confusion to occur. *See Nina Ricci S.A.R.L. v. E.T.F. Enters. Inc.*, 889 F.2d 1070, 12 USPQ2d 1901, 1903 (Fed. Cir. 1989) ("The absence of any showing of actual confusion is of very little, if any, probative value" where evidence as to the use of Applicant's merchandise during the time in question was not presented); *Double Coin Holdings Ltd. v. Tru Dev.*, 2019 USPQ2d 377409, at *9 (TTAB 2019). We also do not know whether Registrant is aware of any instances of actual confusion. *In re Guild Mort. Co.*, 2020 USPQ2d 10279, at *7 (TTAB 2020) ("[I]n this ex parte context, there has been no opportunity to hear from Registrant about whether it is aware of any reported instances of confusion. We therefore are getting only half the story."). Accordingly, the seventh and eighth factors are also neutral.

¹⁶ *Id.*

Finally, Applicant argues that “the buyers of the respective goods . . . will be . . . sophisticated,” and “are well educated, and not likely to make such purchases on impulse.”¹⁷ Applicant goes on to argue that it and Registrant “deal in respective goods . . . that can be extremely expensive” and therefore “more care is taken and buyers are less likely to be confused as to source or affiliation.”¹⁸ Applicant does not point to any evidence to support these statements, we find no such evidence to be of record, and we can make no assumptions in this regard based on the nature of the identified goods. “Attorney argument is no substitute for evidence.” *Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005)). Accordingly, the fourth *DuPont* factor, involving purchasing conditions, is also neutral.

E. Conclusion

We have considered all of the arguments and evidence of record, and all relevant *DuPont* factors. Because we have found that: (1) the marks are very similar in appearance, sound, connotation and commercial impression, and (2) Applicant’s goods are related to Registrant’s goods and may move in the same channels of trade to the same classes of purchasers, we conclude that concurrent use of the marks on the goods will be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 12.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is affirmed.